

Before the  
**UNITED STATES COPYRIGHT OFFICE**  
**LIBRARY OF CONGRESS**  
**Washington, D.C.**

**GENERAL COUNSEL  
OF COPYRIGHT**

**OCT 23 1998**

**RECEIVED**

In the Matter of )

Digital Phonorecord Delivery )

Rate Adjustment Proceeding )

Docket No. 96-4 CARP DPRA

**COMMENTS OF THE COALITION OF INTERNET WEBCASTERS  
TO THE MEMORANDUM OF NMPA, SGA AND RIAA**

Pursuant to the Order of the Copyright Office dated October 16, 1998, the Coalition of Internet Webcasters respectfully submits its comments on the Memorandum of the National Music Publishers Association, Songwriters Guild of America and Recording Industry Association of America (hereinafter "Petitioners") on October 14, 1998 in the above-captioned proceeding.

For the reasons set forth in its August 7, 1998 memorandum, and its prior submissions in this proceeding, the Coalition continues to oppose the adoption of only the proposed regulation adopting the rates for incidental digital phonorecord deliveries ("DPD") set forth in section 255.6, and would oppose adoption of the "clarifications" suggested by the Petitioners' July 21, 1998 memorandum to the Copyright Office.

Notwithstanding, the Coalition could support the Petitioners' suggestion to sever and defer adoption of a rate for incidental DPDs until the next rate adjustment proceeding, with the following additions and modifications.

First, although no party yet has requested a compulsory license for incidental DPDs, with the growth in new media for disseminating sound recordings, the Coalition recognizes that an entity may wish to seek a compulsory license before the next rate adjustment proceeding commences. Such an entity should not be denied the benefit of a compulsory license in the interim. Therefore, the Coalition suggests that along with the decision to sever and defer the rate adjustment proceeding for incidental DPDs, the Copyright Office should adopt a regulation allowing a party to petition the Copyright Office to set a rate for the current period, and that such rate could be retroactive throughout the current period.

Second, the Coalition notes that section 104 of the Digital Millennium Copyright Act of 1998 provides for a study by the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce of the effect of section 117 of the Copyright Act (including temporary copies made in computer memory) on electronic commerce.<sup>1</sup> The findings in this study would affect, if

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<sup>1</sup> That section provides:

**SEC. 104. EVALUATION OF IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT.**

(a) EVALUATION BY THE REGISTER OF COPYRIGHTS AND THE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION- The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly evaluate--

(1) the effects of the amendments made by this title and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and

(2) the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

(b) REPORT TO CONGRESS- The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall, not

not encompass, one of the central issues that the Coalition had asked the Librarian to rule upon in this proceeding; namely, whether the temporary copies created in order to facilitate the real-time performance of streaming audio received via the Internet constitutes an "incidental DPD." Therefore, the Coalition further would recommend that the Copyright Office should defer promulgation of any rate for incidental DPDs until after completion of this Study. subject to the right to petition for a rate as suggested above. After the Study issues, the Copyright Office could seek comments from the parties to the next rate adjustment proceeding and the public on the impact of the Study findings on the subject of this proceeding, and whether it then is appropriate to set the rate.

Respectfully submitted,



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Date: October 23, 1998

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later than 24 months after the date of the enactment of this Act, submit to the Congress a joint report on the evaluation conducted under subsection (a), including any legislative recommendations the Register and the Assistant Secretary may have.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 23, 1998, I served a copy of the foregoing Comments of the Coalition of Internet Webcasters to the Memorandum of NMPA, SGA and RIAA, by first-class mail, postage prepaid, on each of the following:

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